also his way of doing so. In the case of a quasi-judicial functionary such as the Chairman of a statutory body such a test is clearly irrelevant.

In our view the only practicable test here is the test of payment. It has been conceded that this functionary's salary while he is actually functioning as such is not paid by any Government but is paid by the Town Council. That compels us to the conclusions that he is not in the present proceedings and for the purpose of the present proceedings to be considered a public officer who is being sued by virtue of his office and that therefore, Federal Counsel has no right of audience.

Hill and **Good JJ.A.** concurred.

Application dismissed.

Solicitors: *Gibb & Co.; N. Sharma.*

THEAN CHEW v. THE SEAPORT (SELANGOR) RUBBER ESTATE LTD.

[O. C. J. (Ong J.) April 21, 1960]

[K. L. — Civil Suit No. 27 of 1957]

Negligence — Nuisance — Tree — Rubber tree adjoining highway — Fall on passing lorry causing injury to deceased — Fall due to disease — Liability of occupier of land — Civil Law Ordinance, 1956, s.7(8).

Evidence — Estate management — Established standard and practice — Standard of good estate management not necessarily that of reasonable and prudent owner.

The defendants are a company, and they have employed a person competent and experienced in the management of rubber estates as their manager. A diseased rubber tree which stood on the defendants' estate immediately adjoining the highway, fell on the lorry in which the plaintiff's husband was travelling and caused injuries from which he died. In this action the plaintiff claimed damages on behalf of herself and five infant children of the marriage, on the ground of the defendants' negligence, and alternatively, nuisance. The tree was old, about 50 feet in height, excluding the crown, and it stood 33 feet from the nearest edge of the highway, so that persons on the highway are liable to suffer injury if the tree fell across it. The tree suffered from the disease called *ustulina zonata*. On the evidence it was found as a fact that it was the disease affecting the laterals that was the cause of the tree falling, and that, but for such disease, the tree would not have fallen.

The defendants contended that their manager in fact did all that was reasonably required of a reasonable and prudent land owner; that he kept the tree under frequent regular observation and thereby satisfied himself that the tree was in no danger of falling; that this opinion was shared by the three experts whose evidence was before the Court; that the condition of the foliage sufficiently showed the tree to be healthy; and lastly, that in law the defendants were not in the position of insurers.

Held: (1) on the facts, the estate manager had failed to take even the most elementary precautions to prevent danger to persons on the highway in case the tree should fall; this failure, in view of the obviously diseased condition of the tree, amounted to taking an unjustifiable risk. The danger of the tree in that condition falling was reasonably foreseeable and the damage to persons on the highway such that it was, or should reasonably have been, within the contemplation of every prudent land owner. A case of negligence had been established, and therefore the plaintiff was entitled to judgment.

(2) the plaintiff was also entitled to judgment on the alternative ground of nuisance because the defendants omitted to remedy the nuisance constituted by the state of their property when it arose within a reasonable time after they did or ought to have become aware of it.

Per curiam: "Established standard practice (in estate management) may well be the practice of reasonable and prudent estate owners. It may, on the other hand, fall below or even surpass, the standard required by law of a reasonable and prudent owner, which is the test that the law requires to be applied. Evidence of standard practice cannot, however, be substituted for the judgment of the Court or relieve it of the duty of deciding on the evidence whether the defendants' manager has properly discharged the duty of care that he owes to passers-by on the highway."

Cases referred to:—

(1) *Brown* v. *Harrison*, 177 L.T.R. 281, 282.

(2) *Caminer* v. *Northern & London Investment Trust Ltd.* [1950] 2 All E.R. 486, H.L.

(3) *Caminer's* case [1948] 2 All E.R. 1101, 1103.

(4) *Caminer's* case [1949] 2 All E.R. 486, 491, C.A.

(5) *Noble* v. *Harrison* [1926] 2 K.B. 332, 338.

ACTION for Damages.

Miss P. G. Lim for the plaintiff.

M. Edgar for the defendants.

Cur. Adv. Vult.

Ong J.: On February 4, 1956 the plaintiff's husband was travelling in a lorry along the highway between Kuala Lumpur and Klang when a diseased rubber tree, standing on the defendants' estate immediately adjoining the highway, fell on the lorry and caused the injuries from which he died. The plaintiff has brought this action under the provisions of section 7(8) of the Civil Law Ordinance, 1956, claiming damages on behalf of herself and the five infant children of the marriage, on the ground of the defendants' negligence, and, alternatively, nuisance.

The defendants employed a resident manager, Mr. N. R. Tubbs, on the estate who had been there since eight months prior to the accident, and who holds a college diploma in agriculture.

The tree was old for a rubber tree, about 50 feet in height, excluding the crown, and it stood 33 feet from the nearest edge of the highway, which is 18 to 20 feet wide, so that persons on the highway are liable to suffer injury if the tree fell across it. Its base circumference was about 4 feet. It suffered from the disease called *ustulina zonata* described by Arnold Sharples, an authority on the subject, in his book "*Diseases and Pests of the Rubber Tree*", thus:

> The disease is usually discovered on old trees as a "collar rot". On one of the stem a hollow at the base may be formed due to the rotting tissue disintegrating under the influence of the weather and falling away. If a cut is made below the surface at such a point, it will be found that the rotting tissue has spread to a distance of three to four feet above ground. It is seldom that the fungus gains a greater height than this, for by this time most of the tissues at the base of the stem will have become involved, with a consequent restriction in the amount of water supplied from the roots . . . . If an attacked root system is examined, it will be found that the tap-root and some of the larger laterals are involved, and as a result water conduction

will be stopped along these roots and the crown of the tree must suffer, gradually going out of commission. The characteristic symptom is the "Dry-Rot" set up in the attacked tissues. (p. 90).

The progress of the disease is slow, after infection has taken place. This is connected with the fact that the water-conducting vessels are comparatively little affected by the activities of the fungus developing in the attacked tissues. During its progress through the woody tissues, the fungus is largely confined to the medullary ray cells and fibres of the wood. Quick travelling fungi use the long, tubular vessels of the wood as their route for moving from one part of the plant to another, for there are no cross walls to intercept their progress. The death of large, heavily infected trees may be delayed for many years, and if the yields of latex do not fall to any great extent, there is no real reason why such trees should be taken out of the tapping round. Finally, however, trees attacked by *ustulina zonata* disappear from the tapping round, either because the yield of latex becomes too small for their profitable retention, or they are blown down during the heavy wind and rain storms which occur so commonly during certain periods of the year. (pp. 92-93).

In Malaya, a general opinion is held that the accumulation of rubber as bark or earth scrap at the base of the tree for a long period of time, results in the suffocation of the cortical layers beneath, for such rubber pads are wholly air-tight, and it is believed that the best conditions for attack by *ustulina zonata* are thus provided. The fungus becomes established below the pads, spreads deep into the bole and along the adjacent laterals, giving rise to the dry-rot infections so frequently seen in mature areas. (p. 98).

When the price of rubber is sufficiently high planters are not keen on cutting out diseased trees which may be yielding a normal supply of latex on one side. The danger is obvious, for fructifications often develop on the diseased side. (p. 99).

Mr. Dudley St. Leger Parsons, a retired rubber planter and company director, since deceased, whose evidence was taken in England on commission, had deposed that he examined the fallen tree on February 17, 1956 and found that "up to about 3 feet, the whole of the bark as far as one could see, was definitely diseased" that the disease was also in the bole, and visible also in the laterals which were partly exposed.

Mr. Peter Wood Shearlaw, a Visiting Agent for the past 10 years, who examined what was left of the tree on March 1, 1956, said that the disease had infected approximately 2 feet up the stem and two of the laterals.

Another expert, Mr. George Anthony Pye, manager of Golconda Estate, Kampar, vice-chairman of the Incorporated Society of Planters, who had been managing rubber estates for 14 years, inspected the fallen tree, or what was left of it, on March 15, 1956, and said that the disease covered about one-fourth of its circumference, and reached about 2 feet above ground level, and that there were slight signs of disease of the laterals under the diseased portion of the bole.

Mr. Tubbs said that the disease infected up to 2½ feet of the stem above the ground and 25% of the circumference, and also two laterals close to the stem. He was aware shortly after he had come to take charge of the estate that the disease infected this tree and, because of its situation near the highway had kept this tree under regular observation.

The first question which arises is a question of fact: was the disease the cause of the tree falling? The plaintiff alleges that the defendants, their servants or agents, allowed the tree to remain in a diseased condition close to the highway, so that it was likely to fall upon and injure persons passing along the highway. The defence denied that the tree was diseased or defective or dangerous, and, while admitting that it fell and killed the deceased, denied that they had been negligent or had created a nuisance. In view of the unanimity of evidence that the tree was diseased, no doubt remains that it was so in fact. In the defence no explanation was stated why the tree fell — if it did not fall by reason that it was diseased — and, on the pleadings as they stand, my view is that, once it has been established that the tree was diseased, the plaintiff has discharged the onus which rests on her of proving that the fall was due to the disease. Moreover, it was never urged in argument on behalf of the defendants that the diseased condition of the tree was not the cause of its fall, and, on the evidence, I am of opinion that defendants' counsel very properly refrained from doing so. The lorry-driver (P.W. 2) and Mr. Tubbs gave contradictory evidence as to the weather conditions at the time of the accident, but I do not think it is necessary for me to have to choose between the evidence on one side or the other because, if a storm was the alleged cause, it was never pleaded in the defence, even though Mr. Tubbs said that the tree fell down in a storm. If that is their affirmative case, the defendants must so allege it in their defence, which they had not done. No meteorological evidence was given that the storm, if there was one over where the tree stood, was of an exceptional character, and I do not believe that, if a local windstorm of more than ordinary force in fact caused this tree to be uprooted, it would single out this particular one and spare every other in the same stand which were of the same age and size, some of which also, according to Mr. Tubbs, were similarly infected. This tree was being refoliated at the time of its fall, and therefore not in full leaf, for which reason it was also less liable to take the full force of any squalls. According to Mr. Pye, who was a witness for the defence, "the roots where they broke showed signs of disease". I accordingly find as a fact that it was the disease affecting the laterals that was the cause of this tree falling, and that, but for such disease, this tree would not have fallen.

The second question is whether the fall may be attributed to negligence on the part of the defendants or their servants. Mr. Tubbs holds a college diploma in agriculture, and he had had 3½ years previous planting experience before coming to manage the defendants' estate. As such, it may be assumed that he has knowledge of rubber trees superior to that of the ordinary layman, and that he is almost, if not quite, in the class of an expert. It is also in evidence that, if he was in doubt and required more expert

advice, this would have been available to him from the defendant company's Visiting Agent.

The standard of care required of the occupier of land with growing trees is stated in *Charlesworth* on Negligence, 3rd Ed., at p. 147:

"The occupier of land is not liable if a tree, which he did not know, and had no reasonable grounds for knowing, to be unsafe, falls on to the highway and injures a person passing along the highway. His duty is to act as a prudent landowner to prevent his trees which adjoin a highway from being a danger to persons passing along the highway, but he is not bound to call in an expert to examine his trees unless he has reason to believe that they may be unsafe."

The principle formulated by Stable J., and approved by the Court of Appeal in *Brown* v. *Harrison*[1] is in these words:

"Having regard in each particular case to the circumstances of that particular case, if there is a danger which is apparent not only to the expert but to the ordinary layman, which the ordinary layman can see with his own eyes, if he chooses to use them, and he fails to do so, with the result that injury is inflicted, as in this case, upon somebody passing along the high-road, the owner is in those circumstances responsible, because in the management of his property he has not acted as a normal reasonable landowner would act. That, as I understand it, is the extent of the duty."

In *Caminer* v. *Northern & London Investment Trust Ltd.*[2] where a 130 year old elm tree, which was suffering from a root disease undiscoverable by external examination or even if the trunk had been bored, fell on a passing car and injured the plaintiffs in it, the House of Lords affirmed the test applied by the Court of Appeal, viz., the conduct of a reasonable and prudent landowner. Lord Normand went on to say ([1950] 2 All E.R. at p. 493):

"The test of the conduct to be expected from a reasonable and prudent landowner sounds more simple than it really is. For it postulates some degree of knowledge on the part of landlords which must necessarily fall short of the knowledge possessed by scientific arboriculturists but which must surely be greater than the knowledge possessed by the ordinary urban observer of trees or even of the countryman not practically concerned with their care."

In Lord Oaksey's opinion ([1950] 2 All E.R. at p. 496):

"The respondents' duty was to act as ordinary prudent landowners would act. Landowners are not all experts in the management of trees and those who are not performing their duty if they take reasonable steps to employ persons who are experts."

Lord Reid said ([1950] 2 All E.R. at p. 497):

"I have no doubt that a person who has a tree which is in such a position that it or some of its branches may fall and injure some person passing along a busy thoroughfare is under some duty to those who pass . . . I think that the respondents' duty was to take such steps to prevent damage as a reasonable man in the respondents' position would have taken . . . I think that the respondents' duty was not limited to dealing with any danger of which they might happen to be aware, and if a person has any further duty than that with regard to trees his first step must be to look at those trees which are near the highway or to get someone else to do so on his behalf to see whether any of them is dangerous. The respondents being a company could only adopt the latter alternative."

Finally I would quote the opinion of Lord Radcliffe ([1950] 2 All E.R. at p. 501):

"The accepted test that liability only begins when there is apparent in the tree a sign of danger has the advantage that it seems to ignore, or to a large extent to ignore, the distinction between the spot that is much, and the spot that is little, frequented, but on the other hand, I think that it does end by making the standard of the expert the test of liability."

The opinions expressed by their Lordships are of the greatest assistance to me in deciding the question whether or not the defendants have shown the standard of care which the law requires of them in the circumstances of this case. The defendants are a company, and they have employed a person competent and experienced in the management of rubber estates as their manager. He may not be an expert, technically, but the diseased condition of the tree did not require an expert to appreciate that it was a disease which rots the parts affected by it. Mr. Tubbs was acquainted with Sharples' book, though he admitted that he did not know it well. At any rate he is a person whose knowledge "must be greater than the knowledge possessed by the urban observer of trees or even of the countryman not practically concerned with their care."

The issue appears to me to be this: when a rubber tree stands so close to the highway that its fall would endanger persons passing along the highway, and the manager of the estate knows, or ought to know, that it is infected with a disease that rots any part of the root system or bole affected by it, has he taken all necessary precautions to prevent danger to passers-by on the highway as would be taken by a reasonable and prudent landowner by merely keeping the tree under frequent regular observation? Clearly the answer depends on the extent to which the stability of the tree has been affected by the disease, particularly in the root system.

The contention of the defendants, briefly, is that the manager Mr. Tubbs in fact did all that was reasonably required of a reasonable and prudent landowner; that he kept the tree under frequent regular observation and thereby satisfied himself that the tree was in no danger of falling; that this opinion was shared by the three experts whose evidence is before the Court; that the condition of the foliage sufficiently showed the tree to be healthy; and, lastly, that in law the defendants are not in the position of insurers.

Of the three experts, two are witnesses for the plaintiff, the late Mr. Parsons and Mr. Shearlaw. Counsel for the defendants contended that Mr. Parsons never went so far as to say that removal of the tree was called for, and he referred to the following questions and answers: In examination-in-chief:

Q. If you, as an experienced estate manager, had seen a tree with the bole or trunk in that condition and about 32 ft. from the road, what would you have done?

A. If the tree was tapping I should probably pollard it and keep it going as long as possible. But if it was badly gone, I should have taken it out.

In cross-examination:

Q. You also said that from your observation of the tree in its fallen state you think that you would probably have pollarded it, if it had been your responsibility, while it had been standing?

A. That is so, or taken it out.

Q. Well, I was going to ask you about that. As I understand your evidence, you said that if it had been seriously diseased you would have taken it out, but that if it had not been very seriously diseased you would have pollarded it?

A. Yes. I should have kept on tapping it if it was a good yielder. But I should probably have taken it out if it was a bad yielder.

Q. But from the only facilities that you had to observe the tree you are not certain what course you would have adopted in relation to it?

A. I suppose not. There was not any tapping there, but I think that certainly the normal procedure was to make an inspection of the area, and that upon examination of that tree you would put it under suspicion at all events. Whether you took it out or whether you pollarded it straight away would depend on the soundness of its condition, which would depend on general observations.

Q. Of course a person who had inspected the tree in its standing condition would have, would you agree, a better opportunity of making an accurate diagnosis of its condition?

A. Yes.

Q. And the fact that a tree may be diseased is not itself a reason for bringing it down or pollarding it? It is a matter of degree. Is that right?

A. Well, yes, I suppose that is right.

Mr. Shearlaw, the other witness for the plaintiff, in cross-examination by the defendants' counsel, had also said:

"I would not have been alarmed and I would not, in its then condition have removed the tree, but I would have kept a close watch on it for the progress of the disease, especially as it was near the highway. . . . . Today the condition of foliage is the guiding factor in looking for disease. If foliage is healthy one would assume that the tree is sound . . . . If I had seen this tree standing I would not have thought it necessary to cut it down at that stage of the disease. It had not arrived at a stage when I would consider it to be dangerous."

Next, I come to the evidence of Mr. Pye, the expert witness called by the defendants, who said in his examination-in-chief:

"I know Sharples' work. I agree the progress of the disease is slow, and death ensures after a long period. I agree with what was stated in page 93: 'that if yields of latex do not fall to any great extent there is no real reason why such trees should be taken out of the tapping round.' I personally would keep the tree and institute regular inspection e.g. inspecting once a month. If I had seen the tree before it fell I would not have considered it unsafe and cut it down."

In answer to me he further said:

"In this case I am not prepared to say that the disease had nothing to do with the fall of the tree. I would keep this particular tree, whether it was growing deep in the estate or alongside the road. I did not consider it far enough advanced to require the tree to be taken out. I would take the risk of leaving it standing.

If these two laterals visible were diseased, and these laterals were on the side of the tree farthest from the road, I agree that the tree would tend to fall on the road, but I would not make any further examination of those two laterals, or other roots, to see whether, or to what extent, they had been infected, not as to this particular tree which I had examined."

I have set out the evidence of these three witnesses at length, insofar as they are in the defendants' favour, to make it quite clear that I have not omitted to give such evidence full consideration. It may, at first sight, appear that their evidence amply justifies the manager, Mr. Tubbs, in not removing a tree which was yielding latex and refoliating normally as a sound healthy tree should. It was argued that they have established the standard of care which ought to be shown by a reasonable and prudent estate owner, and that Mr. Tubbs' conduct not having fallen below such standard, the plaintiffs case must fail.

I agree that the evidence of witnesses of such high standing in the rubber planting industry is entitled to the greatest weight in that it may be considered as standard practice in estate management to leave diseased trees standing until their yield of latex drops considerably or ceases or their condition becomes plainly dangerous. Established standard practice may well be the practice of reasonable and prudent estate owners. It may, on the other hand, fall below or even surpass, the standard required by law of a reasonable and prudent landowner, which is the test that the law requires to be applied. Evidence of standard practice cannot, however, be substituted for my own judgment or relieve me of the duty of deciding on the evidence whether the defendants' manager has properly discharged the duty of care that he owes to passers-by on the highway. These witnesses are neither jurors nor assessors by whose opinions I am bound on a question of fact.

It has been laid down on the highest authority that the principles of good estate management are not the proper test. In *Caminer's case* Lord Goddard C.J. had held the defendants liable and he said[3]:

". . . . it is the duty of all owners of property to manage it in accordance with the principles of good estate management so that their property may not be in a condition likely to cause damage to persons lawfully using highways in the immediate vicinity, and, if good estate management involves the inspection and trimming of trees from time to time, there is a duty on landowners to carry out those operations."

The decision of the learned Lord Chief Justice was reversed by the Court of Appeal, and on this point Tucker L.J. said[4]:

"There are many things the doing of which may be in accordance with good estate management, but the failure to perform which, I venture to think, may not amount to negligence. I doubt therefore, whether it assists the solution of the problem to test it in terms of good estate management, unless this means no more than doing that which a reasonable landowner would know was necessary for the protection of the public."

In the House of Lords[2] Lord Porter's opinion was ([1950] 2 All E.R. at p. 491):

"I take the suggested obligation to manage property in accordance with the principles of good estate management to mean no more than that the party concerned must act as a prudent landowner would."

In my view, therefore, compliance with the principles of good estate management, of itself,

is no more a ground for relieving a landowner of liability than is default a ground of liability.

It remains now to deal with the particular facts of this case. Mr. Tubbs knew, for almost eight months before the accident, that the tree was diseased, that the disease had gone up to 2½ feet of the stem above the ground, and that the portions of the two large laterals that were visible above the ground were also diseased. According to Mr. Shearlaw, 3 to 4 feet is the common height at which the death of the tree occurs, and Mr. Tubbs admitted: "I would expect the disease was well advanced when it went up to 2½ feet." Though well aware that the disease was well advanced and that the laterals were infected, all the precaution he took against danger of its falling was to keep the tree under observation. On his own admission he knew that the affected laterals were big roots and he agreed that they helped to anchor the tree to the ground. Yet he said he was not worried about its stability. I should have thought that the first thing he ought to have done — if he thought anything at all about the stability of the tree — would have been to ascertain for himself how far along the infected laterals the disease had progressed, and whether the other laterals, which were not visible, had been similarly infected. If he chose to refrain from so doing, as he had in this case, it was, in my view, more than an error of judgment on his part if the tree fell, contrary to his expectations. I cannot imagine any grounds whatsoever for him to think that the disease should be confined to only the visible portions of the two laterals above ground. Closing his eyes to the obvious danger of the disease having rotted, if not the entire root system, at least a sufficiently large portion thereof, so as seriously to affect, as it in fact did affect, the stability of the tree, is an omission for which I can see no possible justification on the part of any reasonable and prudent landowner.

Mr. Tubbs was content merely to rely on observation of the external appearances of the tree, and of its foliage in particular. He said he would consider the tree dangerous when the foliage started to deteriorate. That is not sufficient, in Mr. Parsons' view, once it is known that a tree is diseased; it would be necessary to examine the roots. Mr. Shearlaw agreed that, once the manager knew of the disease, he should look beyond the foliage to the stem and lateral roots. Mr. Shearlaw further said that an infected tree usually gives an increased yield for 6 months to a year before its final death, and that defoliation in *ustulina zonata* occurs when a tree is past saving and on its last legs. These facts, and the fact that, for several weeks past, the tree had defoliated and was in course of refoliating when the accident occurred, all go to show that, if Mr. Tubbs was depending largely on his observation of the state of foliage as an indication of the soundness of the tree, he was using the most unreliable of guides.

In any event, it is clear, in my opinion, that Mr. Tubbs had failed to take even the most elementary precautions to prevent danger to persons on the highway in case this tree should fall. Any simple expedient, by way of shoring or bracing the trunk, so that the tree would fall in some other direction than the highway, would have been completely effective, and failure to do so, in view of the obviously diseased condition of the tree, amounts to taking a risk which I consider entirely unjustifiable. The danger of the tree in that condition falling was reasonably foreseeable and the damage to persons on the highway such that it was, or should reasonably have been, within the contemplation of any prudent landowner. I have no hesitation in saying, therefore, that a case of negligence has been established, and the plaintiff is entitled to judgment.

On the alternative ground of nuisance, the plaintiff is entitled also to judgment. I need only refer to *Noble* v. *Harrison*[5], in which Rowlett J. formulated the principle as follows:

> ". . . . a person is liable for a nuisance constituted by the state of his property: (1) if he causes it; (2) if by the neglect of some duty he allowed it to arise; and (3) if, when it has arisen without his own act or default, he omits to remedy it within a reasonable time after he did or ought to have become aware of it."

I am satisfied that, on the evidence, the present case clearly comes under the third heading or division as stated by Rowlett J.

As to the question of damages: at the time of his death the deceased was 42 years old, and his wife 37 years, by Chinese reckoning. Their eldest son was then 14½ years old; the second son, 12; the third child, a daughter, was almost 10; the fourth child, another daughter, was 2; and the youngest child, also a daughter, was just under 11 months old.

The deceased was a dealer in scrap metal, and in the absence of any evidence to the contrary, I assume that he was of sound health and limb for a man in the early prime of life. He should have had an expectation of life of at least 20 years, but his occupation required constant travelling and exposure, and, taking into consideration the risks of illnesses and accidents, I think a fair and reasonable assessment would leave him a vigorous working life of about 15 years, with a possibly reduced earning capacity towards the end of that period, but which may be continuing for some time thereafter. On the other hand, he was an independent trader, and not only must one envisage the effects of trade depressions, but also the prospects of improvements in his income which may more than compensate for the lean years.

According to the plaintiff the deceased used to earn monthly over $400, though there were no books of account to show it. The material figure, however, was the amount she used to receive from him for the maintenance of the family, and, in my opinion, the sum of $250 per month which she named was not at all unreasonable for a family of seven, with three children in school. I am impressed as to the plaintiff's veracity, not by her demeanour alone, but, as a

test, by her statement that, for clothing the five children and herself, she used to get $20 to $30 every two or three months, whereas she might well have exaggerated the figure beyond an average of $10 per month. The deceased took only his evening meal at home, and I would deduct accordingly $30, leaving $220 as the net amount that went to the support of the family, or $2,640 per annum. Making due allowances for the uncertainties of life and the vicissitudes in the fortunes of trade and commerce, to the deceased's detriment as well as to his advantage, and taking into account acceleration of payment, I would assess the total compensation at $27,500.

The three elder children had been compelled to leave school, by reason of their father's death, and the two sons are now earning their own living, though it is not clear when they started to do so. In all the circumstances of this case I would apportion the $27,500 as follows:

To the plaintiff	$10,000
To the eldest child	1,000
To the second child	2,500
To the third child	3,500
To the fourth child	5,000
To the fifth child	5,500
	$27,500

In the course of the trial, when I pointed out to counsel for the plaintiff that no evidence had been given as to the claim for funeral expenses, Counsel for the defendants intimated that the sum claimed as spent would not be challenged. I accordingly award the sum of $883.30 claimed under this head.

The plaintiff will have the costs of this action.

Judgment for the plaintiff.

Solicitors: *Sen & Lim; Bannon & Bailey.*

Re ANSON CYCLE & MOTOR WORKS; Ex parte THE OFFICIAL ASSIGNEE

[C.A. (Rose C.J., Wee Chong Jin & Ambrose JJ.) April 23, 1960]

[Singapore — Civil Appeal No. 12 of 1959]

Bankruptcy — Avoidance of conveyance — Relation back of Official Assignee's title to act of bankruptcy — Bankruptcy Ordinance (Cap. 11), ss.51, 3(1)(b), 46, and 53.

Practice — Appeal — Time for entering appeal — Bankruptcy Rules, 1897, r.90.

This was an appeal from a judgment of the High Court declaring a conveyance by Ng Ming Yong, a bankrupt, to Lim Kim Boon absolutely void against the Official Assignee. The appellant was Lim Kim Boon, a secondary wife of the bankrupt, and the respondent was the Official Assignee.

The respondent raised a preliminary point: that the appeal was entered and the notice of appeal was served out of time. Rule 90 of the Bankruptcy Rules, 1897, provides that the time for entering the appeal and serving notice thereof on the respondent shall be fourteen days from the date of the signing entering or otherwise perfecting the judgment or order appealed from.

Held: although the judgment appealed against was pronounced on the 5th June, 1959, it was not perfected until the order was signed and sealed by the Registrar on the 19th June, 1959; the period of fourteen days allowed by Rule 90 should be calculated as from the 19th June and, as the notice of appeal was filed and served on the 25th June, Rule 90 was complied with.

Receiving and adjudication orders were made against Ng Ming Yong, sole proprietor of Anson Cycle & Motor Works on the 13th September, 1957. By a conveyance dated the 28th June, 1957, and for a consideration of $16,000 stated therein to have been paid to the bankrupt by the appellant, he conveyed to her a house known as No. 448, Serangoon Road, Singapore. On the 2nd June, 1959, the Official Assignee successfully moved the High Court to declare the conveyance absolutely void.

Held: (1) upon the true construction of section 51 of the Bankruptcy Ordinance the onus is upon the Official Assignee to prove that a conveyance which he is seeking to set aside thereunder was made either without valuable consideration or without good faith on the part of the purchaser; the Official Assignee failed to prove that the appellant did not give valuable consideration for the conveyance, but proved that the appellant was not acting in good faith when the conveyance was made to her; the conveyance was, therefore, absolutely void against the Official Assignee under section 51 of the Bankruptcy Ordinance;

(2) the conveyance was also void against the Official Assignee on the ground that it was a fraudulent conveyance and, therefore, an act of bankruptcy under section 3(1)(b) of the Bankruptcy Ordinance, that the bankruptcy related back to the act of bankruptcy as it was committed during the twelve months next preceding the adjudication, and that, therefore, the property conveyed to the appellant was the bankrupt's property at the commencement of his bankruptcy;

(3) section 53 of the Bankruptcy Ordinance did not protect the conveyance from relation back of the Official Assignee's title as the appellant did not act in good faith.

Cases referred to:—

(1) *In re Helsby*, [1894] 1 Q.B. 742.

(2) *In re Harrison*, [1955] 1 Ch. 260.

(3) *Official Assignee* v. *Khoo Saw Cheow*, [1931] A.C. 67; 2 M.C. 126, P.C.

(4) *Re Guan Hup Hin, Official Assignee* v. *Khoo Saw Cheow*, [1929] S.S.L.R. 75.

(5) *In re Tetley*, 3 Manson 226.

(6) *Mackintosh* v. *Pogose*, [1895] 1 Ch. 505.

(7) *Shears* v. *Goddard*, [1896] 1 Q.B. 406.

CIVIL APPEAL IN BANKRUPTCY.

K. A. Seth for the appellant.

D. C. D'Cotta, Official Assignee, in person.

Ambrose J. (with whom **Rose C.J.** and **Wee Chong Jin J.** agreed): This is an appeal from a judgment of the High Court declaring a conveyance by Ng Ming Yong, a bankrupt, to Lim Kim Boon absolutely void against the Official Assignee. The appellant is Lim Kim Boon, a secondary wife of the bankrupt, and the respondent is the Official Assignee.

The respondent raises a preliminary point: that the appeal was entered and the notice of appeal was served out of time. Rule 90 of the Bankruptcy Rules, 1897, provides that the time for entering the appeal and serving notice thereof